

**YOUTHFUL OFFENDER PAROLE BOARD**

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**TITLE 15
YOUTHFUL OFFENDER PAROLE BOARD
PUBLIC NOTICE
OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the Youthful Offender Parole Board ("Board") proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend §§ 4900, 4944 (a), (b), and 4952 of Title 15, California Code of Regulations (CCR).

PUBLIC HEARING

The Board will hold a public hearing from 9:00 a.m.-12:00 noon on June 25, 2001, at the Youthful Offender Parole Board, 1029 J Street, Suite 500, Sacramento, California.

At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons who make oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his/her duly authorized representative, may submit comments relevant to the proposed regulatory action to the Board. The written comment period closes at 3:00 p.m. on June 25, 2001. All comments must be received by that time.

Submit comments to:

Primary contact person:

Person to ask substance questions:

Connie Erlich
Youthful Offender Parole Board
1029 J Street, Suite 500
Sacramento, CA 95814
Telephone: (916) 322-9800
Fax: (916) 322-8802
E-mail: cerlich@yopb.ca.gov

Alternate contact person:

Shelly Jones
Youthful Offender Parole Board
1029 J Street, Suite 500
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Telephone: (916) 322-9800

AUTHORITY AND REFERENCE

Welfare and Institutions Code (WIC) § 1721 authorizes the Board to adopt the proposed regulations which would implement, interpret or make specific numerous sections of the Welfare and Institutions Code, including §§ 1176 through 1766.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

WIC § 1719 defines the powers and duties of the Board, and § 1721 authorizes the Board to implement regulations carrying out those responsibilities. Current law and proposed regulatory changes are as follows:

- (1) § 4900 sets forth rules of construction and definitions. Subsection (c) was enacted as an emergency measure to provide procedures to follow in the event of a community crisis or emergency. This subsection lapsed.

The proposed revision reenacts the lapsed subsection.

- (2) § 4944 (a) sets forth the rules for attendance at hearings in institutions and camps.

The proposed revision clarifies the roles of observers at hearings.

- (3) § 4944 (b) sets forth the procedures governing witness presentations at hearings.

The proposed revision states that video or audio taped witness presentations shall be played back to wards at hearings unless an exception applies.

- (4) § 4952 lists offenses designated as Category 2 offenses. Subsection (a)(13) added continuous sexual abuse of a child under Penal Code § 288.5 to the list as an emergency regulation. This provision lapsed.

The proposed revision reenacts the lapsed subsection.

The proposed actions amend existing regulations to enhance quality management and effectiveness while:

- clarifying and making specific the Board's procedures while adhering to the Administration's philosophy and statutory mandates to ensure public safety;
- striving toward the Administration's goal to develop processes that entail less governmental bureaucracy (resultant reduced workload and expense);
- streamlining and simplifying the process;
- re-engineering procedures for process improvement;
- addressing previous downsizing mandates by reducing the number of hearings while maintaining due process, quality, effectiveness, and accountability; and
- reducing the error rate created by the complexity of the current system.

Additionally, changes were made for improved clarity, including corrections in spelling and renumbering of sections.

DISCLOSURES REGARDING THE PROPOSED ACTION

Unnecessary Conflict or Duplication of Federal Regulations or Statutes

No federal regulations or statutes apply to this area of regulation. The Federal Bureau of Prisons has jurisdiction over the management and regulation of all federal penal and correctional institutions. Since Bureau of Prison

authority does not extend to state penal/correctional institutions, there is no conflict between federal codes or regulations and regulations passed by the Youthful Offender Parole Board.

Other Matters Statutorily Prescribed

The Board and the Director of the Youth Authority are required to cooperate in developing policies to obtain mutual objectives (Welfare and Institutions Code § 1714). Board proposed regulations are thoroughly discussed and approved at joint meetings.

The Board must submit proposed regulations to the Board of Corrections for information purposes or review and advice (Penal Code § 6025.5).

These are the only other matters prescribed, pursuant to 11346.1 (b) or 11346.5 (a)(4) of the Government Code, pertaining to the proposed regulations of the Board.

Mandates to Local Agencies or School Districts

The proposed regulations do not impose mandates upon local agencies or school districts (Government Code § 11346.5 (a)(5)).

Costs or Savings to State Agencies or in Federal Funding to the State, and Costs to Local Agencies and School Districts

The proposed regulations result in no increased costs or savings to any State agencies; involve no cost to any local agency or school district; involve no other non-discretionary costs or savings to local agencies; and will not involve any costs or savings in federal funding to the State (Government Code § 11346.5 (a)(6)).

Initial Determination of Effect on Housing Costs

Proposed regulations have no effect upon housing costs (Government Code § 11346.5 (a)(12)).

Declaration of Initial Determination Regarding Economic Impact on Business

The Board declares adoption of the proposed regulation will not have a significant, statewide, adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, because California businesses are not required to comply with any of the proposed regulations. Regulations passed by the Board govern only the functions of the Board in carrying out its responsibilities (Government Code § 11346.5 (a)(8)).

Results of Assessment Required by 11346.3 (b) of Government Code

Proposed regulations will not create nor eliminate jobs within California; will not create new businesses nor eliminate existing businesses within California, and; will not affect the expansion of businesses currently doing business within California. (Government Code § 11346.5 (a)(10)).

Finding Prescribed by 11346.3 (c) of Government Code

Proposed regulations make no reporting requirements upon businesses (Government Code § 11346.5 (a)(11)).

Cost Impacts on Representative Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action (Government Code § 11346.5 (a)(9)).

Determination of Effect on Small Business

The proposed regulations relate to the powers and duties of the Board and have no impact upon small businesses. Such powers and duties, set by statute, may not be contracted to private industry. Additionally, the proposed regulations require no small businesses to comply with, enforce, derive a benefit from, or incur a detriment from their enforcement (California Code of Regulations, Title 1 § 4).

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulatory action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The Board invites interested persons to submit written statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above-listed address pursuant to Government Code § 11346.5 (b). As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Connie Erlich or Shelly Jones at the address or telephone number listed above. The notice, initial statement of reasons and text may be viewed on the Board's web site at <http://www.yopb.ca.gov>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the Board may adopt the proposed regulation substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the proposed text, it will make the modified text, with changes clearly indicated, available to the public for at least 15 days before the Board adopts the regulations as advised pursuant to Government Code § 11346.8(c). Requests for copies of any modified regulations should be addressed to the above-listed contact person.

AVAILABILITY OF FINAL STATEMENT OF REASONS

After the close of the public comment period, a final statement of reasons will be prepared and made available to the public. Requests for copies of the final statement of reasons should be addressed to the above-listed contact persons. The final statement of reasons may also be viewed at <http://www.yopb.ca.gov>.

INITIAL STATEMENT OF REASONS

The Specific Purpose of Each Proposed Regulatory Change

The proposed amendments relate primarily to the Board's rules of construction and definitions, rules for hearings, and offense categories and classification.

§ 4900 prescribes the rules of construction and definitions for CCR Title 15, Division 4.5. The proposed amendment adds a new subsection setting forth procedures to be followed in the event of a community crisis or emergency.

§ 4944 (a) specifies the persons allowed to attend Board hearings. The proposed amendment clarifies that observers may not represent a ward unless doing so under CCR Title 15, § 4979 and may attend only those hearings in which they have a specific interest.

§ 4944 (b) sets forth the procedures governing pre-hearing presentations. The proposed amendment specifies that witnesses not wishing to confront wards directly must request the Board panel allow them to make a presentation outside the ward's hearing. Such presentations will be audio or video recorded by the panel and viewed by the ward outside the presence of the witness, unless the presentation meets the confidentiality/sensitivity exemption of § 4944 (b)(2).

§ 4952 sets forth the list of offenses classified as Category 2 offenses and establishes a parole consideration date interval of four years for offenses in this category. The proposed amendment adds continuous sexual abuse of a child under Penal Code § 288.5 to the list.

Technical, Theoretical, Empirical Study, Report or Document Relied Upon

The Youthful Offender Parole Board (Board) has relied upon expert opinion pursuant to Government Code § 11346.2(b)(2) and California Code of Regulations Title 1 § 10(b)(2).

The scope of authority for Board regulations encompasses only those regulations governing the performance of the Board's functions set forth in Welfare and Institutions Code (WIC) § 1719: return of persons to the court of commitment for redispotion by the court; discharge of commitment; orders to parole and conditions thereof; revocation or suspension of parole; recommendation for treatment program; determination of the date of next appearance and; return of nonresident persons to the jurisdiction of the state of legal residence.

Board Members have a broad background in and ability for appraisal of youthful law offenders and delinquents, the circumstances of delinquency for which committed, and the evaluation of the individual's progress toward reformation (WIC § 1717(a)). Special skill and knowledge by reason of study and experience make them qualified experts in this field.

Additionally, the Board consults and relies upon the expertise of the California Youth Authority (CYA) Director and staff recommendations regarding the Board's proposed rules. Board Members' premise regulatory proposals (WIC § 1721(a)) upon qualifying experience and expert opinion.

Less Restrictive Reasonable Alternatives

No less restrictive reasonable alternatives have been brought to the Board's attention. The proposed regulatory changes represent the most effective, least restrictive reasonable alternatives currently known to the Board.

Alternatives Lessening Adverse Impact on Small Business

The proposed regulations impose no adverse impacts upon small business, because small businesses are not required to comply with these regulations. Regulations passed by the Board govern only the functions of the Board.

Initial Determination of No Adverse Economic Impact Upon Business

The proposed regulations relate to the powers and duties of the Board, which are set by statute and may not be contracted to private industry. Businesses do not comply with, enforce, derive a benefit or incur a detriment from these regulations.

TEXT & AUTHORITY

§4900. Rules of Construction and Definitions.

(c) In case of any community crisis or emergency, either statewide or regional, the mandatory timelines and schedules (including releases) as required within CCR, Title 15 are hereby extended by thirty days or fifteen days respectively. Any statewide crisis may extend required or mandated timelines by thirty days. Any regional crisis that does not reach the level of a statewide crisis may extend required or mandated timelines by fifteen days.

NOTE

Authority cited: Section ~~4722~~ 1721, Welfare and Institutions Code. Reference: Sections 1711, 1714, 1716, 1717, 1719, 1720, 1721, 1722 and 1723, Welfare and Institutions Code.

§4944. Rules for Hearings in Institutions and Camps.

- (a) Attendance at Hearings. Attendance at hearings in institutions and camps is limited to:
- (1) Appropriate administrative and treatment team staff and a clerk when available.
 - (2) A ward's parents, guardians, spouse or a relative designated by a parent or guardian, shall be permitted to attend a Board hearing as observers; however, any of these persons may be excluded by the Board for good cause, and shall be excluded if the ward makes a reasonable objection to their presence. Reasons for exclusion shall be set forth in writing by a memorandum to the case file by the Board panel chairperson.
 - (3) Members of the public having a professional interest in the work of the Board ~~and~~ or the Youth Authority or in a specific ward or hearing may be permitted to attend those hearings in which they have a particular interest as observers. Observers may not represent wards. Representation is governed by § 4979 of these regulations. If the ward objects to their presence, such observers shall be excluded from the hearing room unless otherwise authorized by statute.

NOTE

Authority cited: Section 1721 and 1722, Welfare and Institutions Code. Reference: Sections 1721 and 1723, Welfare and Institutions Code.

§4944. Rules for Hearings in Institutions and Camps.

(b) ~~Pre-Hearing Presentations. Persons~~ Witnesses, including victims, having an interest in a particular ward or case may request an opportunity to make a presentation to the Board panel. Such persons may, upon their request, provide their testimony out of the presence of the ward prior to the commencement of the hearing. A Member or Board representative shall voice record the presentation when the ward is not present and shall advise the ward of the presentation and the substance of information obtained from the presentation The Board panel shall make an audio or video record of the presentation, and shall play the recorded presentation on the record during the ward's hearing, unless the presentation qualifies under (2) of this subsection. If the presentation qualifies under (2) of this subsection, the Member or Board representative shall advise the ward of the substance of the presentation while maintaining the confidentiality of the source or witness.

(1) Arranging ~~Pre-Hearing Presentations.~~ Requests for ~~pre~~-hearing presentations shall be referred to the executive officer. The executive officer and the office of the superintendent shall cooperate in the scheduling of an interview. The executive officer will be notified of the appointment; however, final approval for a ~~pre~~-hearing presentation rests with the chairperson at the designated location.

(2) Confidential Status of ~~Pre-Hearing Presentations~~ to the Board. The confidential status of these presentations is conditional. Confidential status is granted only if the information is sensitive and not directly related to the ward's behavior.

(A) Examples of sensitive information are:

1. Parents who are not natural parents.
2. A ward born out of wedlock or from an uncertain relationship.
3. A ward born in a mental hospital or prison while the mother was undergoing treatment or was incarcerated.

(B) The Board will share sensitive information relating to a ward's behavior with his/her casework supervisor.

NOTE

Authority cited: Section 1721 and 1722, Welfare and Institutions Code. Reference: Sections 1721 and 1723, Welfare and Institutions Code.

§4952. Category 2 Offenses

A parole consideration date interval of four years shall be established for those cases committed to the Youth Authority for offenses in this category.

(a) Offenses.

- (1) Voluntary Manslaughter (192 Penal Code).
- (2) Rape (in concert or with substantial injury) (261 and all subsections and 264.1 Penal Code).
- (3) Sodomy (in concert or with substantial injury) (286 and all subsections Penal Code).
- (4) Sexual Assault with a Foreign Object (in concert or with substantial injury) (289 and 264.1 Penal Code).
- (5) Oral Copulation (in concert or with substantial injury) (288a and all subsections Penal Code).
- (6) Lewd or Lascivious Act on Child Under 14 (Age of defendant in relationship to victim to be considered as possible mitigation) (288 and all subsections Penal Code).
- (7) Kidnap for Ransom, Reward or Extortion (209(a) Penal Code).
- (8) Kidnap during carjacking (209.5 Penal Code).
- (9) Explosion/attempt to explode or ignite a destructive device with the intent to commit murder (12308 Penal Code).
- (10) Kidnap for Robbery (209[b] Penal Code).

- (11) Conspiracy to commit any Category 2 offense (182 Penal Code).
- (12) Attempt of any Offense in Category 1.
- (13) Continuous sexual abuse of a child (288.5 Penal Code and all subsections).

NOTE

Authority cited: Section 1721 and 1722, Welfare and Institutions Code. Reference: Sections 1176, 1719, 1721, 1723 and 1766, Welfare and Institutions Code.